

OUTGOING AIRGRAM

DEPARTMENT OF STATE-A/CDC/MR

REVIEWED BY *W. Hall*DATE *4-26-53*

Department of State

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TOKYO.

A-877, April 23, 1953

Reference Embassy's telegram No. 3263, April 10, 1953;
Embassy's despatch No. 2117, April 14, 1953.

The Japanese Foreign Office is quite correct in considering that signature of the treaty of friendship, commerce and navigation at this time has made possible an early resolution of the treaty trader problem. The timely signature of the treaty is enabling the Department to submit the treaty to the Senate in time for consideration and possible action by that body during the current session, if that body approve. Had signature been delayed until the Foreign Relations Committee's calendar and schedule of hearings had been made up, the demands of other important public business upon the limited time available to the Committee and to the Senate as a whole would undoubtedly have necessitated passing the treaty over to the following session. In that event it would have been quite likely that the Senate could not have acted upon the treaty much before April or May of next year.

As the Japanese Foreign Office undoubtedly is aware, early completion of the ratification process and consequent early entry into force of the treaty offer the only means of solving the treaty traders problem quickly and conclusively. In the absence of appropriate treaty provisions actually in force, there are no authorized procedures whereby nonimmigrant aliens may enter and remain in the United States for business purposes except on a temporary basis, which requires that specific limitations as to time be placed upon their sojourn. The existence of legally effective provisions of this kind is essential if the intent of Congress in maintaining treaty traders as a separate nonimmigrant category in the new Immigration and Nationality Act, and in emphasizing the temporary nature of the sojourn of other nonimmigrant businessmen, is to be scrupulously observed.

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The Act

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The Act does not authorize interim measures of the kind visualized by the Foreign Office. The Foreign Office apparently is under the impression that the so-called B-1 visa, issued under Section 101(a)(15)(B) of the Act may be used for this purpose. However, under the Act such visas may be issued only to aliens who wish to visit the United States "temporarily" for business purposes. The intent is, of course, to permit aliens to attend to particular business transactions needing only a brief time for their accomplishment, to be followed by prompt departure from the country. To permit aliens entry under such visas in anticipation of their becoming eligible for a more enduring status (which may or may not actually materialize) would be incompatible with the concept of temporary sojourn for business purposes. A Japanese applicant for a B-1 visa who expresses his intention to convert his status from that of temporary business visitor to treaty trader upon entry into force of the Treaty must be deemed to be seeking entry for indefinite sojourn, rather than the entry for temporary sojourn required by Section 101(a)(15)(B). Such an expression of intention would seem highly speculative in any event, considering the many uncertainties, such as unforeseen delays in ratification of the treaty, unfavorable business conditions or changes in the personal circumstances or plans of the individual, that might affect or even prevent the eventual attainment of treaty trader status. A Japanese businessman having legitimate business in this country should not concern himself with such speculative considerations but address himself exclusively to the presentation of his application for a B-1 visa and to furnishing the various supporting proofs required in connection therewith.

However, an applicant should not be denied a B-1 visa solely on the ground that the business activity he wishes to carry on temporarily in the United States would entitle him to treaty trader status were the treaty in effect. Possible future eligibility for such status, which is wholly dependent upon a future contingency (i.e., ratification and entry into force of the treaty) would seem to be immaterial in the case of an applicant who furnishes the proofs required by the Act and the administrative regulations (e.g., evidence of intention

to maintain

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to maintain his residence in Japan, proper documentation for reentry to Japan, possession of return transportation, and the like) that his proposed visit is in fact temporary in nature and purpose.

The Department is not in a position to say exactly how an application for a temporary visit for business purposes which may eventually develop into a basis for treaty trader status should be regarded. Such an application might well be a border-line case that would turn upon satisfaction of the consular officer that the applicant was intending in good faith to make only a temporary visit. It is conceivable, of course, that such a case may arise. For example, a Japanese businessman contemplating the establishment of an import-export office in the United States might apply for entry for a short period in order to establish business contacts, sound out potential suppliers or purchasers and otherwise determine whether his undertaking would be feasible, and make arrangements for the establishment of the office or, agency and the necessary personnel thereof. In such a case, the important consideration would seem to be his intention with respect to this particular visit (i.e., that the visit is genuinely temporary and that he presently intends to return to Japan promptly) and not some indefinite and possibly unrealizable intention as to the future. Moreover, a Japanese businessman in this country as a bona fide temporary visitor presumably would not be precluded from applying for, and obtaining, if able to meet all the requirements, a change in nonimmigration status under Section 248 of the Immigration and Nationality Act, should the treaty enter into force while he happened to be in the United States and, in view of all circumstances then obtaining, he then decided to change his plans.

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(V.G.L.)

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DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.

April 21, 1953

REF : E FE DC/L REP OLI CIA S/MSA COMM

Airgram A-783, March 31, 1953, and Embdes 2118, April 15, 1953

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SUBJECT: History of Restrictions on Stock Purchases

In reply to the Department's request for a history of the restrictions on the purchase of shares in Japanese corporations, particularly purchases by foreigners with yen not acquired by conversion of foreign exchange, the following salient facts are presented.

1. Shortly after the end of the war Ministerial Order No. 88, 1945, based on the Potsdam Declaration, was issued. It was in effect a blanket prohibition against all purchases by foreigners of stock in Japanese corporations. The Japanese economy was in chaos, security prices unduly depressed, and opportunity existed for extraordinary speculative activities by foreigners. One of the tenets of United States Government policy was to conserve Japanese assets and to prevent investment exploitation of Japan by those enjoying special privileges under the Occupation. Japanese officials welcomed this order and enforced it strictly.

2. The above prohibition remained in effect until 1949 when Cabinet Order 51 was issued making possible the purchase of stock subject to validation by the Ministry of Finance. The only purchases validated (approved prior to purchase) under the provisions of this Cabinet order, however, were the purchases of privileged subscriptions by foreigners who received rights by virtue of stock held before the war. There were 130 such cases and while all purchases were made with dollars, there was no provision for granting remittance rights of either principal or dividends and none were granted.

3. In May, 1950, the first "Law Concerning Foreign Investment" was passed. Its provisions were highly restrictive and based on the principle that Japan, in default on its external debt and in effect operating in receivership, should screen new foreign investment with a view to permitting only that investment which would unquestionably strengthen the economy. Such investment would be guaranteed favorable treatment in comparison with old investors. The discrimination was justified on the ground that adding this new investment would ultimately strengthen the economy so that old investments would enjoy an advance in value. Chiefly of interest here was the prohibition against the purchase of outstanding stock. Outstanding stock

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defined as being that stock the purchase of which does not result in any increased assets for the company which issued it. However, newly issued stock (that stock the purchase of which does result in increased assets for the company issuing it) could be purchased on a privileged basis by those foreigners who had previously acquired shares in connection with technological assistance or management contracts. Such purchases were not subject to validation but the intended purchase had to be reported before its consummation. Under these circumstances the right to remit dividends only from stock purchased with foreign exchange was granted.

4. In April, 1952, the first amendment to this law was enacted. It served to emphasize the distinction between stock purchased with yen converted from foreign exchange and yen domestically acquired without conversion from foreign exchange. The following pertinent provisions are still in effect. It makes possible the purchase of outstanding stock but in foreign exchange only and subject to validation. Such validation depends on the type of industry involved and the percentage of alien control already existing. The prohibition against the purchase of outstanding stock with yen not converted from foreign exchange was maintained. The regulations covering the purchase of new stock were made less stringent. New stock can now be purchased either with yen or with foreign exchange, but remittance rights are granted only if the purchase is made with foreign exchange. Furthermore, validation prior to purchase is required only if remittance rights are desired. Where no such rights are desired, a post facto report to the Ministry of Finance is sufficient.

5. The law was amended for a second time in July, 1952. While the prohibition against the purchase of outstanding stock with yen was retained, several measures were included to facilitate the purchase and sale of stock by foreigners. Two of these are of particular note. Proceeds from the sale of stock originally purchased under the provisions of the law can be reinvested in other shares and the same remittance rights retained for the new stock as attached to the old. Principal, plus capital gains, can now be repatriated in five equal annual installments after a waiting period of two years. The provisions of this amendment were reported in detail in the Embassy's despatch No. 117, July 18, 1952.

It may be noted that Japan has progressively relaxed restrictions on foreign investment as the economy has strengthened; however, there is no intent to invite foreign capital into Japan without limitation. Such capital is desired for constructive purposes in limited fields on a long-term basis and preferably in the form of loans rather than in equities, and if in equities, on a minority basis if possible.

For the Ambassador:


W. W. Diehl
Financial Attache

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